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DATE OF DECISION : 11-09-1995

AND

W/o DINESH HARIBHAI DAMOR

Vs.

2. To be referred to the Reporter or not ?

II

Miss Shilpa Shah, learned Advocate for the Appellant
Mr. D.N Patel, Addl. PP for the Respondent-State.

11-09-1995

ORAL JUDGEMENT (Per : Vaidya, J.)

When this appeal was placed before us for admission earlier, on hearing the learned advocate Ms. Shilpa Shah, we were prima facie satisfied that it warranted immediate final hearing and disposal as the impugned order of conviction and sentence had no substance worth the name to be sustained for even a minute more to keep female accused unnecessarily in jail any more !! In that view of the matter, we directed the office to prepare xerox copy of the record and proceedings and thereafter to furnish the same to the respective parties appearing before us. After this was done, this appeal has been accordingly placed for hearing before us.

1.1 Today, after hearing the learned Advocates for the parties, we have admitted this appeal and taken up the same for final hearing, with the consent of the learned advocates.

2. This appeal by Bai Shantu, widow of Dinesh Haribhai Damor from jail is directed against the impugned judgment and order of conviction and sentence dated 24-12-1995 rendered in Sessions Case No. 100 of 1994 passed by the learned Additional Sessions Judge, Panchmahals at Godhara, wherein on she coming to be tried for the alleged offence punishable under Section 302 of the Indian Penal Code, was at the end of trial, convicted for the same and sentenced to undergo imprisonment for life and to pay a fine of Rs. 1,000/= and in default to undergo further RI for three months.

3. To briefly narrate the prosecution case, as summed up and reflected in the Charge, Exh-3, Dinesh Haribhai (since deceased) was the husband of the present appellant. The incident in question wherein Dinesh Haribhai was done to death by Bai Shantuben by Dharia, took place on 30-4-1994 at 14-00 hours on a way towards Dudhmal Street at Village Chilakot. According to the prosecution, Dinesh and Bai Shantu on 30-4-1994, were going to village Matva. On way, Bai Shantu asked Dinesh why he was not speaking to her. In reply, Dinesh said "I was talking to you" to which Bai Shantu said, "You are speaking with mouth but not behaving yourself like a person who is expected to behave with his wife." So saying Bai Shantu gave a Dharia blow on the head, neck and various parts of the body of Dinesh. Thereafter, it is the prosecution case that Bai Shantu went to Limkheda Police Station and gave a complaint Exh-28, which came to be recorded by PW-7 Police Head Constable Chhatrasinh Kalubhai at 9.00 p.m. On the basis of these facts, after the investigation was over, the appellant came to be

chargesheet to stand trial for the alleged offence punishable under Section 302 of the IPC before the Sessions Court, Panchmahals at Godhara. At the trial, the appellant pleaded not guilty and claimed to be tried. The trial Court, after duly appreciating the prosecution evidence brought on the record, convicted Bai Shantu on the basis of two extra judicial confessions made before Charansinh Deepsinh (PW-2, Exh-20) and Haribhai Kidiyabhai (PW-3, Exh-21) father of the deceased giving rise to the present appeal.

4. Miss Shilpa Shah, learned advocate (Appointed) while challenging the impugned order of conviction and sentence, has taken us through the evidence of the prosecution witnesses as well as the reasons for conviction and sentence. According to Miss Shal, there is no reliable, dependable evidence on the basis of which even remotely an order of conviction can be recorded. As against this, Mr. D.N Patel, learned APP adopting the very same reasons given by the learned Sessions Judge has supported the impugned order of conviction and sentence.

5. On going through the entire record, it is very clear that there is no eye-witness to the alleged incident and the entire prosecution case hinges upon the two extra-judicial confessions given by the accused before Charansinh Deepsinh, who is the Ex-Police Patel and Haribhai Kidiyabhai, who happens to be the father in law of the accused. It is too well-known to be emphasised that extra-judicial confession standing by itself is the weakest type of evidence and accordingly, in absence of some independent corroboration forthcoming on record by way of substantial evidence, to record an order of conviction thereupon would be simply risky and hazardous. Taking into consideration the overall facts and circumstances of the case except the aforesaid two extra-judicial confessions, there is indeed nothing on the record to connect the accused with the crime alleged against her. At the cost of repetition, we may say that since the extra-judicial confession is the weakest evidence, we refuse to take into consideration the same, and accordingly, once the same is done, there is nothing on the record on the basis of which the impugned order of conviction and sentence can be sustained. Further, it is inherently improbable that Bai Shantu, who had only married three days back with the deceased, after committing the murder, would make extra-judicial confessions and that too before the Police Patel, who was stranger and Haribhai with whom there was no personal relations as such developed, so as to be ultimately arrested, stand trial and get convicted and sentenced to the life imprisonment !! It is the say of Charansinh that he took the accused to Limkheda for the purpose of lodging a complaint but the Head Constable Chhatrasinh Kalubhai, who recorded the complaint, in his evidence has clearly stated that he did not

see those two persons (the ex-Police Patel and the father-in-law) alongwith the deceased. This also raises serious doubt regarding Bai Shantu making extra-judicial confessions before the said two persons. Not only that but even the self-incriminating complaint filed by the accused before the Police would also be hit by the provisions of Section 25 of the Evidence Act rendering it inadmissible.

6. In this view of the aforesaid discussion, there is indeed no doubt in our mind that the trial Court has committed a serious error in reaching the conclusion that the Bai Shantu has committed an offence punishable under Section 302 of the Indian Penal Code, and accordingly, the impugned judgment and order of conviction deserves to be quashed and set aside. It is simply unfortunate that the learned Sessions Judge was unaware of the basic principle that the extra-judicial confession is a weakest type of evidence and in absence of any independent corroboration forthcoming on the record no order of conviction and sentence can be recorded !!

7. In the result, this appeal is allowed. The impugned judgment and order of conviction and sentence passed by the trial Court is hereby quashed and set-aside and the Appellant is ordered to be set at liberty forthwith unless her presence is so required in connection with any other criminal prosecution.
